



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 7**

11201 Renner Boulevard  
Lenexa, Kansas 66219

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

**JAN 12 2017**

Article No.: 7014 1200 0000 6127 0227

CSC-Lawyers Incorporating Service Company  
Registered Agent for Belfonte Ice Cream Company  
221 Bolivar Street  
Jefferson City, Missouri 65101

Re: Belfonte Ice Cream Company, Kansas City, Missouri  
Opportunity for Pre-Filing Negotiations

To Whom It May Concern:

In response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals, the Emergency Planning and Community Right-to-Know Act (EPCRA) was passed in 1986. EPCRA and its implementing regulations imposes requirements for industry to report on the storage, use and release of hazardous substances to federal, state and local governments so that those governments can, in turn, use the information to prepare communities for potential risks.

The U.S. Environmental Protection Agency received information concerning a release of anhydrous ammonia on July 7, 2016 at the Belfonte Ice Cream Company (Belfonte) facility located in Kansas City, Missouri (the Facility). As a result, EPA requested information consisting of a Chemical Release Questionnaire from Belfonte concerning the release and received Belfonte's completed Chemical Release Questionnaire on August 12, 2016. EPA has completed our review of the information collected and has determined that the following violations of EPCRA have occurred:

1. Failure to immediately notify the State Emergency Response Commission (SERC) of the release, as required by Section 304(a)(1) of EPCRA, 42 U.S.C. § 1104(a)(1); and
2. Failure to submit a written follow-up report to the SERC and Local Emergency Planning Committee (LEPC), as soon as practicable, after the release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 1104(c).

The EPA believes that an enforcement action in the form of a civil penalty is appropriate for these violations. Accordingly, EPA's intent at this time is to file an administrative complaint within the next 60 days seeking civil penalties for these violations.

Based on the information the EPA now has before it, the EPA believes a civil penalty of Fifty-Three Thousand Five Hundred Ninety-Two Dollars (\$53,592.00) is appropriate. The EPA calculates proposed penalties for EPCRA violations pursuant to the Enforcement Response Policy for sections 304, 311 and 312 of the Emergency Planning and Community Right-To-Know Act and Section 103 of the Comprehensive Environmental response, Compensation and Liability Act (ERP, September 1999). A link to this information can be found in the enclosed additional sources of information.



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### Opportunity for Pre-Filing Negotiations

While the EPA believes it is appropriate to proceed with a formal enforcement action, we also recognize that resolution of this matter may be better accomplished by conducting negotiations prior to the filing of a complaint. By this letter we are offering you the opportunity to negotiate a resolution of the proposed penalty before the complaint is filed. Settlement of this matter through payment of a civil penalty and any injunctive relief must be memorialized in a Consent Agreement and Final Order to be signed by Belfonte and the EPA within the 60-day period. As part of these pre-file negotiations, the EPA will consider any additional information Belfonte may have that is relevant to the penalty or violations. If Belfonte is interested in participating in pre-filing negotiations, please contact me **within 10 calendar days of your receipt of this letter** by email at [mills.clarissa@epa.gov](mailto:mills.clarissa@epa.gov) or phone at (913) 551-7743. If you choose not to participate in pre-filing negotiations, do not contact me within the 10-day time period, or settlement of this matter is not reached within the 60-day pre-filing time period, the EPA intends to proceed with the filing of an administrative complaint.

### Ability To Pay

If Belfonte believes that it does not have the financial ability to pay the EPA's proposed penalty and wants the EPA to consider the company's financial condition, Belfonte must provide the EPA with appropriate financial documentation to substantiate its claim **within the first 30 days** of the 60-day pre-filing negotiations period. Such documentation shall include three years of signed federal income tax returns and financial statements, and a completed financial ability to pay form that I will provide to you upon request.

### Supplemental Environmental Projects

Belfonte may also wish to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project (SEP). A SEP is a project purchased or performed by a violator that provides significant environmental benefits and has a nexus to the environmental harm threatened or caused by the violations. A link to the full description of the EPA's policy concerning the use of SEPs in settlement actions can be found in the Additional Sources of Information enclosure.

### Next Generation Compliance

The EPA also encourages consideration of Next Generation compliance tools in administrative settlements whenever appropriate. There are a number of tools available to discuss, but we believe that electronic reporting, public accountability through increased transparency, and advanced monitoring may be appropriate in this matter. For additional information, see "Use of Next Generation Compliance Tools in Civil Enforcement Settlements," January 7, 2015 (link to this document is included in the Additional Sources of Information enclosure).

As indicated above, the EPA has identified violations of EPCRA by Belfonte that warrant the assessment of a civil penalty. However, the EPA is committed to working with Belfonte to resolve this matter and believes that pre-filing negotiations offer all parties an opportunity to reach settlement without protracted litigation. Your immediate attention to this matter is greatly appreciated.

If you have any questions, please do not hesitate to contact me at (913) 551-7743 or [mills.clarissa@epa.gov](mailto:mills.clarissa@epa.gov), or Terri Blunk, from the EPA's Chemical and Oil Release Prevention Branch at (913) 551-7013 or [blunk.terri@epa.gov](mailto:blunk.terri@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'CHMills', written in a cursive style.

Clarissa Howley Mills  
Assistant Regional Counsel

Enclosures: Additional Sources of Information  
SEC Notice

cc: Belfonte Ice Cream Company  
1511 Brooklyn Avenue  
Kansas City, Missouri 64127

Terri Blunk, AWMD/CORP

## **Additional Sources of Information**

- Information on EPCRA  
<https://www.epa.gov/epcra>
- Information on EPA's SEP policy  
[www.epa.gov/enforcement/supplemental-environmental-projects-seps](http://www.epa.gov/enforcement/supplemental-environmental-projects-seps)
- Use of Next Generation Compliance Tools in Civil Enforcement Settlements (January 2015)  
<https://www.epa.gov/sites/production/files/2015-01/documents/memo-nextgen-useinenfsettlements.pdf>
- Enforcement Response Policy for sections 304, 311 and 312 of the Emergency Planning and Community Right-To-Know Act and Section 103 of the Comprehensive Environmental response, Compensation and Liability Act (September 1999)  
<https://www.epa.gov/sites/production/files/documents/epcra304.pdf>
- Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22  
[https://www.epa.gov/sites/production/files/2013-10/documents/final-crop-fr\\_1.pdf](https://www.epa.gov/sites/production/files/2013-10/documents/final-crop-fr_1.pdf)
- Small Business Fact Sheet  
[www.epa.gov/compliance/small-business-resources-information-sheet](http://www.epa.gov/compliance/small-business-resources-information-sheet)

## **NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.